

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

COMERICA BANK, a Texas Banking  
Association, successor in interest by merger  
to Comerica Bank, a Michigan Banking  
Corporation,

Plaintiff,

vs.

Case No. 2014-1336-CK

CREATIVE CHILD, INC., a Michigan  
Corporation, and BRANDON BILSKI IN  
HIS CAPACITY AS TRUSTEE OF THE  
JUDITH A. BILSKI TRUST U/A/D  
12-22-1999, an individual,

Defendants.

\_\_\_\_\_ /

OPINION AND ORDER

Plaintiff has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Defendants have filed a response and request that the motion be denied.

*Factual and Procedural History*

On August 29, 2011 JAB Properties, LLC (“JAB”) executed a promissory note in favor of Plaintiff in the amount of \$586,616.11 (“Note”). Subsequently, Defendants each executed a guaranty securing JAB’s obligations under the Note (collectively, the “Guaranties”).

On April 4, 2014, Plaintiff filed its complaint in this matter asserting claims for breach of the Guaranties. On October 28, 2014, Plaintiff filed its instant motion for summary disposition pursuant to MCR 2.116(C)(10). Defendants have filed a response

and request that the motion be denied. On December 15, 2014, the Court held a hearing in connection with the motion and took the matter under advisement.

### *Standard of Review*

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

### *Arguments and Analysis*

While it appears undisputed that the Guaranties exist and are valid, Defendants contend that Plaintiff's claims are inappropriate as they had not breached the terms of the Guaranties at the time the complaint in this matter was filed. Specifically, Defendants contend that they could not have breached the Guaranties where the terms of the Note have not been breached as all payments due under the Note as of the date of the complaint had been paid.

On January 23, 2014, Plaintiff sent a letter to JAB and Defendants advising them that the payment for January 2014 was not made on time and that as a result Plaintiff was declaring a default, accelerating the indebtedness owed under the Note, and demanding payment in full by January 30, 2014. (*See* Plaintiff's Exhibit 7.)

In this case, it appears undisputed that the payment for January 2014 was due on January 1, 2014, but that the payment was not made until January 17, 2014. Accordingly, while the January payment was ultimately paid, the fact remains that the payment was late. The Note and/or Guaranties do not provide a cure period and the Note affirmatively provides that Plaintiff may, at its option, and without prior notice, declare any or all of the amount owed under the Note immediately due and payable in the event that JAB defaults under the terms of the Note. (*See* Plaintiff's Exhibit 3.) While JAB/Defendants continued to make monthly payments through April 2014, the fact remains that on January 23, 2014 JAB's obligations under the Note, and Defendants' obligations under the Guaranties, changed from being a monthly obligation to pay the monthly installment payment to an obligation to pay the full amount owed under the Note by January 30, 2014.

Defendants/JAB undisputedly failed to pay the amount demanded in the January 23, 2014 letter by January 30, 2014. Further, Defendants have failed to provided any authority in support of their position that Plaintiff was not authorized to accelerate the balance and demand payment in full. Consequently, the Court is convinced that Defendants breached the terms of the Guaranty by failing to make the required payment by January 30, 2014. Accordingly, the Court is satisfied that Plaintiff is entitled to summary disposition in its favor.

### *Conclusion*

Based upon the reasons set forth above, Plaintiff's motion for summary disposition is GRANTED. Plaintiff shall submit a proposed judgment to the Court within 28 days of the date of this Opinion and Order. Any objections/response to the proposed

judgment shall be filed within 14 days of the date the proposed judgment is filed. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and CLOSES the case. The issue of damages remains OPEN.

IT IS SO ORDERED.

/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: December 30, 2014

JCF/sr

Cc: *via e-mail only*  
Steven A. Morris, Attorney at Law, [smorris@simonattys.com](mailto:smorris@simonattys.com)  
Christopher P. Aiello, Attorney at Law, [chris@chrisaiello.com](mailto:chris@chrisaiello.com)